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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/697,034 | 10/31/2003 | Rodolphe Lourdel | 0529-1021 | 1105 |
| 466 | 7590 | 08/08/2007 | EXAMINER | |
| YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202 | | | SWIGER III, JAMES L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3733 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 08/08/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/697,034 | Applicant(s) LOURDEL ET AL. | |
| | Examiner James L. Swiger | Art Unit 3733 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/4/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/11/2007 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Biedermann et al (U.S. Patent No. 5,672,176) in view of Schultheiss et al. (US Publication 2002/0123752). Biedermann et al. discloses a device having a connector (5), a connecting rod (15), a screw having a spherical head (1) with a threaded body (2) and an external diameter greater than the spherical head (Fig. 3). Biedermann et al. further discloses a connecting element (16), vertical branches (11 and 12), a U-shaped opening (7), and a locking clip as a blocking device (20) with pressure screw (40). The

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Blocking device is considered the ring-like portion 20 in combination with the upper, threaded screw socket 45 to create a blocking device. The connecting element has a vertical bore (in the direction of arrow F in Fig. 1). Biedermann et al. also discloses a threaded socket (13). Biedermann et al. also discloses a device where the circular and screw-threaded portions form an internal shoulder. See Fig. 1 below.

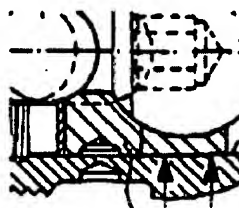


Figure 1.

The disclosed device also has an internal diameter of the bore smaller than the threaded portion. Biedermann et al. finally discloses a cylindrical body with threaded screw external surface (46) with an internally opened bore (47) that can form a bearing surface.

Biedermann et al. disclose the claimed invention except for more specifically wherein an external diameter of the screw threads at the upper end is larger than the diameter of the spherical head. Schultheiss et al. disclose an anchoring system wherein the diameter of the spherical head is smaller than the diameter of the threads. This allows the anchor to be better fixed within the area of concern (see pars 0028-0032) within the bone. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Biedermann et al. having at least an anchor with the above dimensions to better secure the device in use.

Claims 4-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable

over the combination of Biedermann et al. and Schultheiss et al. '752, as applied to claim 1 above and further in view of Marnay et al. (U.S. Patent No. 5,658,285). The combination of Biedermann et al. and Schultheiss et al. '752 disclose the above device except for a ring. Marnay et al. teaches a ring (20) with a collar (21). It would have been obvious to one skilled in the art at the time the invention was made to incorporate the ring of Marnay et al. into the device of the combination of Biedermann et al. and Schultheiss et al. '752 to support a better closure for the screw interface.

Regarding claim 5 in view of Marnay, the combination of Biedermann et al. and Schultheiss et al. '752 Biedermann et al. disclose the claimed invention except for the sizing of the dimensions of the cylindrical portion. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the external diameter of the cylindrical portion slightly smaller than the internal diameter, so the larger external diameter can create a collar. The applicant has not disclosed that such measurements solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a forming a collar on the cylindrical portion of the anchoring device. In re Dailey and Eilers, 149 USPQ 47 (1966).

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Biedermann et al. and Schultheiss et al. '752 as applied to claim 6 above and in view of Puno et al. (U.S. Patent No. 5,360,431). The combination of Biedermann et al. and Schultheiss et al. '752 disclose the above invention except for a vertebral anchoring device with a socket having two opposite slots partially cutting the length of

the cylindrical body. Also, these two separate portions are connected by a bridge to set limits on the size of the opening created by the slots. Puno et al. discloses a socket with slots (51) that is capable of keeping the two portions connected at the level of the shoulder and delimiting a maximal opening. It would have been obvious to one skilled in the art at the time the invention was made to incorporate the modifications of Puno et al. with the device of the combination of Biedermann et al. and Schultheiss et al. '752 to better secure the vertebral anchoring device and to impose limits on its capabilities.

Response to Arguments

Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

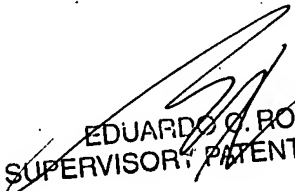
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JLS 7/30/07

JLS


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER